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Case C-189/01, *H. Jippes, Afdeling Groningen van de Nederlandse Vereniging tot Bescherming van Dieren, Afdeling Assen en omstreken van de Nederlandse Vereniging tot Bescherming van Dieren* v. *Minister van Landbouw, Natuurbeheer en Visserij*, Judgment of the Full Court of 12 July 2001, nyr.

1. Introduction

The economic and practical disruption brought about by the foot and mouth disease is only too well known to residents of a number of Member States: the limitations imposed not only on farmers but also on the movement of ordinary citizens as well as non-farming animals, led to serious economic consequences. Although a vaccine is available for the disease, the Community has a non-vaccination policy: vaccination is prohibited because it does not allow the eradication of the disease. This is because once an animal has been vaccinated, it is not possible to detect whether it is a carrier of the virus, which spreads extremely easily. Further, (non-European) foot and mouth-free countries may refuse to import meat from countries which allow vaccination in fear that the undetectable virus might enter their territory. In order to avoid the disease from spreading, a non-vaccination policy has to be accompanied by the mandatory killing of the infected animals. Ms Jippes and two animal protection associations attacked the Community policy arguing that by privileging mandatory killing over vaccination, it did not take into sufficient account animal welfare. The case was the first decided under the new accelerated procedure which, in cases of exceptional urgency, allows for a derogation from the ordinary rules of procedure.[1] From a substantive viewpoint the case raises interesting questions, which deserved the attention of the full Court, in relation to the Community's standpoint on animal welfare, namely whether animal welfare can be considered a general principle of Community law.

1. The CFI has used the expedited procedure in Joined Cases T-195/01 & T-207/01, *Gibraltar* v. *Commission*, ruling of 30 April 2002, nyr.

2. Factual background

Ms Jippes owned four sheep and two goats as pet animals. Worried about the possibility that her animals might be infected by the foot and mouth disease which would, under Community rules, result in their mandatory killing, Ms Jippes applied to the Minister for Agriculture seeking an exemption from the prohibition on vaccination. According to Community rules vaccination is prohibited subject to derogations in case of "emergency vaccination".[2] The introduction of emergency vaccination is decided by the Commission in collaboration with the Member State concerned, or by the Member State following notification to the Commission, provided that basic Community interests are not endangered. Emergency vaccination can take the form of suppressive vaccination, carried out exclusively in conjunction with pre-emptive killing; or protective vaccination which explicitly excludes pre-emptive killing. The Commission authorized the competent Dutch authorities to have recourse to emergency vaccination (both suppressive and protective) and laid down the conditions and territory in which such vaccination could take place.[3] Since Ms Jippes resided outside the vaccination zone her request to vaccinate her pets was dismissed by the Minister. Appealing against the Minister's decision, Ms Jippes and two animal protection associations attacked the vaccination ban imposed by Community law on two grounds. First, they argued that it was incompatible with Article 3 of the Convention for the Protection of Animals kept for Farming Purposes, to which the Community is party, which provides that housing, food, water and care should be appropriate to the animals' physiological and ethological needs (hereinafter the Convention).[4] Secondly, the applicants contended that the ban was incompatible with a general principle of Community law allegedly requiring "all appropriate measures to be taken in order to ensure animal welfare and to guarantee that animals are not unnecessarily exposed to pain and suffering and that no unnecessary harm is done to them".[5] The national court also enquired as to the proportional-

2. Council Directive 85/511/EEC introducing Community measures for the control of foot-and-mouth disease, O.J. 1985, L 315/11, amended by Council Directive 90/423/EEC, O.J. 1990, L 224/13. The latter introduced the non-vaccination policy.

3. Commission Decision 2001/279/EC amending Decision 2001/246/EC laying down the conditions for the control and eradication of foot-and-mouth disease in the Netherlands in application of Art. 13 of Directive 85/511/EEC, O.J. 2001, L 96/19.

4. European Convention for the protection of animals kept for farming purposes adopted within the framework of the Council of Europe, O.J. 1978, L 323/14, ratified by the Community pursuant to Council Decision 78/923/EEC concerning the conclusion of the European Convention for the protection of animals kept for farming purposes, O.J. 1978, L 323/12, Art. 3 (now Art. 3a following the amendments introduced by the Protocol of amendment to the European Convention for the Protection of Animals kept for farming purposes, O.J. 1992, L 395/22).

5. Para 36 of the judgment.

ity of the vaccination ban and of the Commission's decisions authorizing vaccination in selected zones only. Further, having regard to the number of outbreaks of the disease and its rapidity in spreading, as well as the serious consequences deriving from it, the national court considered the matter to be one of exceptional urgency and requested that the new accelerated procedure be used.

3. Judgment of the Court

The Court accepted the national court's request and dealt with the case by means of the new accelerated procedure which in cases of exceptional urgency allows the President of the Court to derogate from the ordinary rules of procedure in order to ensure a prompt ruling.

As for the merits of the case, the Court rejected the applicants' contention that animal welfare be considered a general principle of Community law. In order to support their claim, the applicants relied on several arguments. First, they argued that the principle that animals should not be exposed to pain or suffering and that their health and welfare must not be impaired is part of the "collective legal consciousness". Further, they submitted that such principle could be inferred from the intention expressed by the Member States and the Community in ratifying the Convention as well as in adopting Community secondary legislation for the protection of animals. Lastly they relied on Protocol 24 to the Amsterdam Treaty which states that "[i]n formulating and implementing the Community's agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage". The applicants pointed out that according to Article 311 EC, the Protocol forms an integral part of Community law with which the Directive in question had to comply.

The applicants also stressed that the fact that the principle of animal welfare is not mentioned amongst the objectives of the Community or of the Common Agricultural Policy (CAP), is not conclusive given that numerous principles of Community law have been recognized by the Court despite the fact that they are not listed as Community objectives. The Commission and the intervening Member States (the Netherlands, Greece, Ireland, Italy, Finland) all opposed the applicants' request for reasons very much reflected in the Court's ruling.

The Court adopted a textual approach to conclude that animal welfare protection does not form part of the general principles of Community law. Thus animal welfare is not mentioned as one of the Treaty or CAP objectives;

the Council's decision which ratified the Convention expressly states that animal protection is not itself one of the objectives of the Community; the wording of the Protocol, which is limited only to four fields of Community activity and provides for exceptions, makes it apparent that "it does not lay down any general principle of Community law which is binding on the Community institutions";[6] the Convention does not impose any clear, precisely defined and unqualified obligation; there is no indication in the case law that the Court has accepted any plea of justification based on the protection of animals derogation contained in Article 30;[7] and, although the secondary legislation refers to it, there is no indication therein of the fact that animal welfare protection should be considered a general principle of Community law.

This notwithstanding, the Court did not deny some importance being attached to the protection of animals and their health. In the Court's view, this is a requirement of public interest reinforced by the Protocol, the fulfilment of which can be verified in the context of the proportionality (the relevant general principle) of the measure. Thus the Court found it necessary to verify that the Community had taken *full account* of the requirements of animal welfare in adopting the contested measures.[8]

Consistently with its previous case law on the CAP, the Court applied the test of "manifest inappropriateness" in order to assess the proportionality of the measures: in areas in which the Community enjoys a wide margin of discretion the Court refuses to substitute its judgment for that of the

6. On the legal value of the Protocol see Cramm and Bowles, "Animal welfare and the Treaty of Rome – A legal analysis of the Protocol on animal welfare and welfare standards in the European Union" 12 JEL (2000), 197–205. For an account of the background to the adoption of the Protocol, see Wilkins (Ed.), *Animal Welfare in Europe* (Kluwer Law International, 1997), chap. 6.

7. Para 75 of the ruling states "Similarly, Article 30 EC refers to the 'life of ... animals only by way of exception to the prohibition of measures having equivalent effect, and *there is nothing in the Court's case law to indicate that the Court has accepted any plea of justification based on that provision*" (emphasis added). This paragraph is particularly obscure (the French and Italian versions are worded in a comparable way). To the author's knowledge the Court has accepted the protection of animals' justification on several occasions; for recent examples see Case C-67/97, *D Bluhme*, [1998] ECR I-8033, and Case C-350/97, *W Monsees* v. *Unabhängiger Verwaltungssenat für Kärnten*, [1999] ECR I-2921 in which the Court found that in principle the Member State could rely on that justification for the period preceding harmonizing legislation, but it then found the rules not proportionate. Further, it would be peculiar for the Court to exclude one of the derogations expressly mentioned by the Treaty. It is to be wondered whether this paragraph is not an example of a side effect (inaccurate drafting) of the accelerated procedure.

8. The wording seems stronger than that used in Case 131/86, *United Kingdom* v. *Council*, [1988] ECR 905, where the Court stated that the protection of animals must be taken into account by the Community institutions when exercising their powers (para 17).

institutions.[9] Further, the Court restated the principle according to which the legality of an act does not depend on a retrospective assessment of its efficacy. The Court then found that both the Directive and the Commission's decisions were not dis-proportionate. As to the plea that the decisions breached the principle of equal treatment since animals in the fire break zone and animals in zoos could take advantage of preventive vaccination whilst animals located elsewhere could not, the Court found that the situations were not comparable and that, even had they been, the Commission's measures were objectively justified.

4. Analysis

The issue of animal protection has arisen on several occasions, mainly as a possible ground of derogation from Article 28,[10] as well as a public interest ground to be taken into account in the exercise of discretion in agriculture cases.[11] The case at issue however raised for the first time the problem of whether animal welfare is to be considered one of the general principles of Community law.

The Court rejected the applicants' contention that animal welfare should be so considered, finding instead that animal welfare is "merely" a public interest to be taken into account by the institutions when exercising their regulatory power. The ruling is consistent with the sources and functions of the general principles and with the Community's standpoint on animal welfare as highlighted by Community secondary legislation. We will first examine the difference between a general principle and a public interest, and then look at the defining characteristics of general principles. We will then conclude that the Court's ruling reflects the dominant minimalist approach which sees the protection of animals from unnecessary suffering as an aspect of public morality.

In judicial review cases, general principles of Community law are the yardstick against which the legality of measures adopted within the field of Community law is to be measured.[12] In the case annotated here, the

9. See Case C-331/88, *Fedesa and others*, [1990] ECR I-4023, para 21.

10. See e.g. Cases C-5/94, *The Queen* v. *MAFF, ex parte Hedley Lomas Ltd* [1996] ECR I-2553; C-162/97, *Gunnar Nilsson, Per Olov Hagelgen, Solweig Arrborn* [1998] ECR I-7477; *Monsees* and *Bluhme*, both cited *supra* note 7.

11. For recent examples see the many cases relating to the limitations imposed in order to deal with the BSE crisis: Case C-507/99, *Denkavit Nederland BV* v. *Minister van Landbouw, Natuurbeheer en Visserij, Voedselvoorzieningsin- en verkoopbureau*, Judgment of 8 Jan. 2002, nyr; C-180/96, *UK* v. *Commission*, [1998] ECR I-2265.

12. General principles bind all the institutions, Court included. Thus the Treaties must be interpreted in the light of general principles; Toth, "Human rights as general principles of

relevant general principle was that of proportionality, not animal welfare. Proportionality as a general principle means that the legislature has to consider conflicting interests when legislating; the degree of review will then depend on the margin of discretion enjoyed by the institution adopting the measure.[13] In this case, the Court recognized that animal welfare is *one* of the conflicting interests which have to be taken into account when exercising a discretion. But in policy-drafting, the institutions enjoy a broad margin of discretion and a rule is only struck down when manifestly inappropriate.[14]

On the other hand, when assessing the legality of a measure in relation to more specific general principles,[15] such as fundamental rights, proportionality becomes relevant for an investigation as to *how* the balance between competing interests has been struck, i.e. whether the limitation of a legally protected right is justified having regard to the pursued aim.

The difference is one of degree since in the latter case the Court's scrutiny is more "invasive"; it is however also conceptual. When the institution is weighing public interests, it is making policy choices. Provided that it has taken all relevant interests into account, and that the choice is not manifestly inappropriate, the Court is not going to interfere with the institution's discretion. In this context, scrutiny over the proportionality of the measure is closer to a test of unreasonableness than to proportionality-proper. On the other hand, when the measure affects a legally recognized right (or interest), the scrutiny of the Court goes further and the assessment of proportionality involves a *substantial* review on how the balance between the individual right and the public interest has been struck.[16] This is because "the protection for certain recognized interests – generally those such as traditionally protec-

law, in the past and in the future" in Bernitz and Nergelius (Eds.), *General Principles of Community Law* (Kluwer International, 2000), pp. 73–92 and Hartley, *The Foundations of European Community Law* (4th ed., OUP, 1998), chap. 5, consider the general principle as being a source of law hierarchally superior even to the Treaties.

13. For a comprehensive study on the different ways in which the principle of proportionality is applied in Community law see De Burca, "The principle of proportionality and its application in EC law" 13 YEL (1993), 105–150 and "Proportionality and Subsidiarity as General Principles of Law" in Bernitz and Nergelius (Eds.), op. cit. *supra* note 12, 95–111. For comparative studies see Emiliou, *The Principle of Proportionality in European Law* (Kluwer Law International, 1996); and Ellis (Ed.), *The Principle of Proportionality in the Laws of Europe* (Hart, 1999).

14. The situation is similar to cases in which judicial review is sought on the grounds that a measure conflicts with environmental protection objectives. Also in those cases the test for review is one of "manifest error" of appraisal. See Case C-341/95, *Gianni Bettati* v. *Safety Hi-Tech Srl*, [1998] ECR I-4355, and Case C-284/95, *Safety Hi-Tech Srl* v. *S. & T. Srl*, [1998] ECR I-4301.

15. The Court has recognized as general principles: fundamental rights, legal certainty and protection of legitimate expectations, effective remedies and equality.

16. For an interesting discussion on the differing degrees of review according to the subject matter see *Regina (Daly)* v. *Secretary of State for the Home Department* [2001] 2 A.C. 532.

ted civil liberties and human rights, and other *legally* acknowledged values and interests – is generally recognized as a judicial task".[17] The inclusion of an interest amongst the general principles of Community law somehow transforms it into a *legally recognized* interest: it takes it from the realm of "politics", i.e. choice between competing public interests, to the realm of legally protected "interests" upon which the Court can legitimately adjudicate.

An example might be useful to clarify the distinction between a public interest and a general principle. Consider scientific research: in drafting legislation regulating the use of animals for scientific purposes the institutions have to take into account animal welfare: thus they might impose limitations on scientific research in order to avoid unnecessary animal suffering. If however animal welfare were to be recognized as a general principle of Community law, a scrutiny as to whether the benefits arising from the use of animals justify the violation of their welfare would be necessary. It is not obvious that the extensive use of animals, especially in cases relating to cosmetic research, could be thus justified. Consider other examples: intensive farming when there is no immediate need for mass meat consumption, or the cruel treatment of geese for the production of *foie gras*. These are only the most obvious examples of cases which would raise considerable problems were animal welfare to be considered as a general principle of Community law. It is hardly surprising then that the Court avoided venturing on such a difficult path: choices such as the degree of protection which should be afforded to animals, and indeed their legal status, are better left in the hands of the Community legislature.

Moreover, the ruling of the Court is hermeneutically consistent with the (accepted) sources and functions of the general principles. General principles, whether in a national or international context, are mainly interpretative tools developed by the courts in order to effectively perform their adjudicative function.[18] They reflect the values inherent in the system of reference. In the Community context the ECJ had to develop a substantial body of general principles not only as an aid to interpretation, but also in order to fill the gaps arising from the sectoral and non-comprehensive nature of the Treaties.[19]

17. De Burca, op. cit. *supra* note 13, 105–150, at 107, emphasis added.

18. For a comparative study on General Principles see Koopmans, "General principles of law in European and national systems of law: A comparative view" in Bernitz and Nergelius (Eds.), op. cit. *supra* note 12, 25–34; for a more theoretical approach see Wiklund and Bengoetxea "General constitutional principles of Community law", *ibid.*, 119–142, esp. 121–122; for a study of the way the general principles of Community law are applied by French and English courts see Boyron, "General principles of law and national courts: Applying a Jus Commune", 23 ELRev (1998), 171–178.

19. On the development of the general principles see Herdegen, "The origins and development of the general principles of Community law" in Bernitz and Nergelius (Eds.), op. cit. *supra* note 12, 3–23; Rodriguez Iglesias, "Reflections on the general principles of Community

Thus, the Court found that there are "inherent" limits to the regulatory and executive powers of the Community institutions. In order to identify these limits, the Court drew mainly from the common *constitutional* traditions to the Member States; this is not to say that a general principle needs to be reflected in *all* the Member States' constitutional traditions.[20] The general principles however undeniably reflect the values inherent in contemporary liberal democracies. Tridimas has thus identified as one of the characteristics of the general principles the fact that they derive from the rule of law and refer "primarily to the individual and the public authorities".[21]

The contention that animal welfare be considered as one of the general principles of Community law needs then to be assessed against this background. The level of protection afforded to animals varies considerably across the Community and there seem not to be any consensus yet on the fact that animals might have some autonomous rights.[22] Further, the principle of animal welfare is not part of our common constitutional tradition; rather it seems that the principle of animal welfare more properly rests on public morality, i.e. on the idea – this shared across the Community – that unnecessary cruelty must be avoided, with different Member States having different views of when animal suffering can be deemed necessary.[23] At Community level this

law", 1 CYELS (1998), 1–16; see also Arnull, *The General Principles of Community Law and the Individual* (Leicester University Press, 1990); Hartley, op. cit. *supra* note 12, chap. 5; Tridimas, *The General Principles of EC law* (OUP, 1999).

20. The principle of proportionality, for instance, derives mainly from the German legal tradition, and was absent in the British Constitutional tradition. Other sources of general principles are Treaty provisions and International law. The textual justification for the Court's elaboration of the general principles can be found in Art. 220 EC which provides that the ECJ "shall ensure that in the application and interpretation of this Treaty the law is observed".

21. Tridimas, op. cit. *supra* note 19, p. 3.

22. The contention that animals might be right-holders whose rights – like those of children – can be exercised only vicariously has been made by leading philosophers on animal rights and seems to have recently been endorsed by the German *Bundestag* which has passed an amendment to extend the protection afforded by the Constitution to animals (reported in *The Guardian*, 18 May 2002, p. 2). It can be argued that if animals were to be considered as right-holders, then the Court could have legitimately included animal welfare amongst the general principles of Community law since to do so would have been consistent with the idea that general principles are a means to protect rights when there is a legal vacuum. However, for the time being there is no consensus in the Community as to the legal status of animals. On animal rights see especially Singer, *Animal Liberation* (2nd ed., Pimlico, 1995); and also *Practical Ethics* (CUP, 1979), esp. chap. 3; Regan, *The Case for Animal Rights* (Routledge and Kegan Paul, 1983); and *Defending Animal Rights* (University of Illinois Press, 2001). For an overview of the main philosophical positions in relation to animals see Gruen, "Animals" in Singer (Ed.), *A Companion to Ethics* (Blackwell Companions to Philosophy, 1991); for a historical anthology of philosophers' views on animals see Regan, Singer and Cliffs (Eds.), *Animal Rights and Human Obligations* (Prentice Hall, 1976).

23. The view that the protection of animals from unnecessary cruelty is justified on public morality grounds was endorsed in England in *In Re Wedgwood*, [1915] Ch 113, CA. In case

is reflected in the body of legislation which aims at minimizing, rather than eliminating, animal suffering: thus slaughtering must be "humane";[24] animal testing for cosmetic products should be eliminated as soon as feasible;[25] scientific research has to be regulated so as to minimize animal suffering;[26] minimum standards must be respected when transporting animals,[27] and so on.[28]

The Court's finding that animal welfare is not a principle of Community law, but rather a public interest to be taken into account reflects then both the common constitutional traditions of the Member States, and the Community's position as emerging from the regulatory instruments that deal with the issue.

C-1/96, *The Queen* v. *MAFF*, ex parte *Compassion in World Farming Limited*, [1998] ECR I-1251, CIWF attempted to rely on the public morality derogation to attack the Minister's refusal to restrict the export of veal calves to Member States which afforded a lesser degree of protection to animals; the Court however did not examine the issue since it found that secondary legislation pre-empted Member States from relying on Art. 30. For a philosophical articulation of this view see also Kant, "Duties to Animals and Spirits" in *Lecture on Ethics* (CUP, 1997) and in Regan, Singer and Cliffs (Eds.), op. cit. *supra* note 22, at 122–123.

24. Council Directive 93/119/EC on the protection of animals at the time of slaughter or killing, O.J. 1993, L 340/21.

25. Council Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products, O.J. 1976, L 262/169, as amended *inter alia* by Council Directive 93/35/EEC, O.J. 1993, L 151/32 (the consolidated version of the Directive is available at europa.eu.int/eurlex/en/consleg/pdf/19-76/en_1976L0768_do_001.pdf). The Directive fixes a date for a prohibition on the marketing of cosmetic containing ingredients tested on animals; the deadline can be postponed in case insufficient progress has been made in developing alternative testing methods to replace animal testing. The deadline has been already extended twice; see Commission Directive 2000/41/EC postponing for a second time the date after which animal tests are prohibited for ingredients or combinations of ingredients of cosmetic products, O.J. 2000, L 145/25.

26. Council Decision 1999/575/EC concerning the conclusion by the Community of the European Convention for the protection of vertebrate animals used for experimental and other scientific purposes, O.J. 1999, L 222/29.

27. Council Directive 91/628/EEC on the protection of animals during transport, O.J. 1991, L 340/17. For a critical assessment of the Directive see Brooman and Legge, "Animal Transportation", (1995) NLJ, 1131–1133.

28. For a comprehensive account of Community legislation on animal welfare see Wilkins, *Animal Welfare in Europe* (Kluwer Law International, 1997). See also Council Regulation 3254/91/EEC prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards, O.J. 1991, L 308/1. The adoption of this Regulation, which provides for a ban on imports of pelts of given species unless the country of origin has banned leghold traps or complies with internationally agreed human trapping standards led to a controversy with the USA and Canada in the context of the WTO; see Harrop, "The international regulation of animal welfare and conservation issues through standards dealing with the trapping of wild mammals", 12 JEL (2000), 333–360.

5. The accelerated procedure

The debate on the administration of justice at Community level has been very lively in recent years and there is no doubt that the overload of the Community courts, with its consequences on the average length of proceedings, is one of the main causes of concern. The situation is felt to be so serious that during the last Intergovernmental Conference, the President of the Court in a letter to the Financial Times broke the institution's traditional silence and launched a forceful "cry" for help to the Member States.[29] The need to afford the European courts with the means to rule more promptly when necessary was also set out in the Due Report on the future of the judicial system of the European Union. Thus the Report recommended that the Rules of Procedure be reformed so as to provide for an accelerated procedure to be used in cases of exceptional urgency. The matter was felt to be so pressing that it could not await the Treaty amendments;[30] during the year 2000 the Rules of Procedure of the Court were amended accordingly and the possibility to have recourse to accelerated procedures was established for cases arising from references from national courts,[31] as well as for direct proceedings in front of the CFI and ECJ (expedited procedure).[32]

In the case of references for a preliminary ruling, the President of the ECJ, at the request of the national court, may exceptionally decide to apply an accelerated procedure which derogates from the ordinary rules of procedure.[33] Thus, the President may *immediately* fix the day for the hearing, whilst normally the date for the hearing is fixed only after the written procedure and, where applicable, the preparatory inquiries have been carried out. After the date has been fixed the parties may lodge statements and written observations within a period fixed by the President which cannot be less than 15 days. Further, the President may ask the parties to limit their observations to the essential points of law raised by the question referred. The Court then rules after hearing the Advocate General.

29. *Financial Times*, 18 April 2000, p. 23. See also "The EC Court of Justice and the Institutional Reform of the European Union" (April 2000), available on www.curia.eu.int/en/txts/intergov/rod.pdf

30. *The future of the judicial system of the European Union* (Proposals and Reflections), available on the Court's website at www.curia.eu.int/e-n/txts/intergov/ave.pdf, p. 10 and ss. On the Nice Treaty amendments see Johnston, "Judicial reform and the Treaty of Nice", 38 CML Rev. (2001), 499–523.

31. Amendments to the Rules of Procedure of the Court of Justice of 16 May 2000, O.J. 2000, L 122/43.

32. Amendments to the Rules of Procedure of the Court of Justice of 28 Nov. 2000, O.J. 2000, L 322/1 and Amendments to the Rules of Procedure of the Court of First Instance, O.J. 2000, L 322/4. The amendments have introduced a new article 62a and 76a of the respective Rules of Procedure.

33. Art. 104a of the Rules of Procedure.

The accelerated procedure leaves a desirable margin of discretion to the President as to which rules to derogate from, ensuring the flexibility necessary to tailor the procedure to the actual needs of the case whilst also allowing the possibility of delivering a prompt ruling. In the case at issue the hearing took place less than two months after the application was lodged (usually the first hearing is approximately one year after the application), and the case was decided less than a month after the hearing. Compared with the time it usually takes for a ruling (21 months in 2000),[34] this is quite extraordinary; the accelerated procedure will be an essential tool to afford effective protection to persons' rights, and indeed one of the concerns expressed in the Due report was the prospect of unduly long proceedings in cases relating to visas, asylum and immigration policies (Title IV). Although so far the European Court of Human Rights has not taken into account the time needed for a preliminary ruling in calculating the length of domestic proceedings to assess a possible violation of Article 6 of the European Convention on Human Rights, it could decide to follow a different approach when the delay directly affects personal freedom.[35]

These are the obvious advantages of the new procedure; however there is also a considerable flaw: the Opinion of the Advocate General is not published and the report for the hearing, usually obtainable on request, is also not available. It is to be expected that the procedure will not be used in *acte claire* type of cases, since in those cases the Court has now the power to make an order,[36] but will rather be used in cases in which new, if not fundamental, points are raised. Not to make the Opinion available to the public (it is not even available on request) seems then an unjustified failure in transparency. Reasons of expedition do not provide a plausible excuse: if the Court can deliver a ruling in less than a month so can the Advocate General. Delays relating to translation problems do not justify the fact that the Opinion is never to be rendered public. Given the importance of the Advocate General's Opinion for following and understand the Court's reasoning it is thus to be hoped that this serious flaw will be remedied as soon as possible. Since the Rules of Procedure leave considerable discretion to the President as to the rules which can be derogated from, it seems that in future cases the publication of the Advocate General's opinion might be decided without further amendment of the Rules of Procedure.

34. See Annual Report of the Court of Justice of the European Communities for 2000, available on the Court's website at www.curia.eu.int/en/stat/st00cr.pdf

35. *Pafitis and others* v. *Greece*, (1999) 27 EHRR 566. See also Case C-185/95 P, *Baustahlgewebe GmbH* v. *Commission*, [1998] ECR I-8417, in which the ECJ accepted that proceedings in front of the European courts are not to be excessively delayed; it then found that five and a half years for proceedings before the CFI was an excessive length of time.

36. Art. 104 (3) of the Rules of Procedure.

6. Conclusions

The case at issue raised important points not only as to the standpoint of the Community on animal welfare but also as to the distinction between general principles and Community's public interests which have to be taken into account when exercising a regulatory function.

As for the former, the Court seems to have embraced the *minimalist* view which sees animal welfare as part of public morality, thus rejecting (for the time being) the idea that animals might have autonomous rights. As to the latter point, the ruling is consistent with the recognized function and sources of the general principles; the Court safeguards the very primacy of the general principles as well as the idea that a general principle must reflect common constitutional traditions. Further the Court is far from disregarding the changes which have occurred in our perception of animal welfare: animal welfare is a public interest which the institutions *have* to take into account when exercising their discretion.

Elanor Spaventa*

* University of Cambridge.